



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,295	08/01/2003	Donald R. Loveday	1999U026.US-CON	5059
25959	7590	07/15/2004	EXAMINER	
UNIVATION TECHNOLOGIES LLC 5555 SAN FELIPE, SUITE 1950 HOUSTON, TX 77056				CHEUNG, WILLIAM K
ART UNIT		PAPER NUMBER		
		1713		

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/632,295	LOVEDAY ET AL. <i>[Signature]</i>
	<b>Examiner</b>	<b>Art Unit</b>
	William K Cheung	1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 August 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>0801</u> .	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,274,684. Although the conflicting claims are not identical, they are not patentably distinct from each other because the invention of claims 1-21 of U.S. Patent No. 6,274,684 is the genus invention of the process invention of claims 1-19. It would not be difficult for one of ordinary skill in art to recognize that a polymerization process of claims 1-21 of U.S. Patent No. 6,274,684 could be made continuous to obtain the invention of claims 1-19.

***Allowances***

3. Claims 1-19 would be allowable if the ODP rejection set forth is overcome.
4. The following is an examiner's statement of reasons for allowability:

The present claims are allowable over the closest references of Canich et al. (WO97/48735), and Schrock et al. (US 5,889,128).

*The invention of claims 1-19 relates to a **continuous gas phase polymerization process** comprising combining in a **single gas phase reactor** **olefin monomers** with a **catalyst composition** comprising an **activator**, a **first catalyst compound** comprising a **Group 15-containing metal compound** and a **second catalyst compound**; wherein the **Group 15-containing metal compound** is represented by the formula of claim 1.*

No prior art which anticipates or renders obvious has been located as of the date of the instant action. The closest prior art to Canich et al. disclose a polymerization process using a Group 15 containing metal catalyst where the metal Nickel (page 53, claim 8, line 32) with a second catalyst. Canich disclose that second catalyst comprises a metallocene or a Ziegler-Natta catalyst (page 53, claim 1, line 7). However, the disclosure of Canich et al. is silent on that a Group 15 containing metal catalyst where the metal can be Group 3 to 7 metal. Therefore, Canich et al. do not suggest or teach a Group 15 containing metal

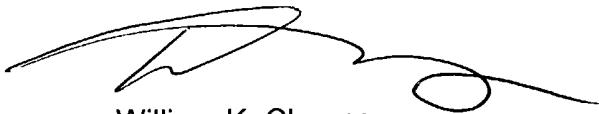
catalyst where the Group 3 to 7 metal and it would not have been obvious to one of ordinary skill in the art to modify the disclosure of Canich et al. to obtain the invention of claims 1-19. Schrock et al. disclose a process for polymerizing ethylene in the presence of a catalyst comprising a Group 15 containing bidentate or tridentate ligated metal (Ti, Zr or Hf) catalyst compounds (col. 6, line 18; line 45-65 to col. 7, line 1-11). However, Schrock et al. do not suggest to use the catalyst in a blend. Therefore, it would not have been obvious to one of ordinary skill in the art to combine the two references to obtain the invention of claims 1-19. Claims 1-19 would be allowable if the ODP rejection set forth is overcome.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K Cheung whose telephone number is (571) 272-1097. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William K. Cheung

Primary Examiner

July 11, 2004